IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1446 of 2004
in
SPECIAL CIVIL APPLICATIONNo 7302 of 2004
with
CIVIL APPLICATION No 5783 of 2004

With

LETTERS PATENT APPEAL NO 1447 OF 2004
In
CIVIL APPLICATION NO 5467 OF 2004
with
CIVIL APPLICATION No 5784 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
Yes

2. To be referred to the Reporter or not? Yes :

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
No

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
No

5. Whether it is to be circulated to the concerned Judge/Judges ? : YES
Yes

MOTIBHAI R CHAUDHARY CHAIRMAN
Versus
REGISTRAR CO-OP SOCIETIES

Appearance:
1. LETTERS PATENT APPEAL No. 1446 of 2004
MR. K.S. NANAVATI, LD. SR. COUNSEL FOR
NANAVATI ASSOCIATES for Appellant
MR PK JANI for Respondent No. 4-16 on Caveat
2. LETTERS PATENT APPEAL NO. 1447 of 2004

MR. MIHIR JOSHI FOR MR. S.N. THAKKAR FOR
APPELLANT.
MR PK JANI for Respondent No. 5-17 on Caveat

CORAM : HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE D.A.MEHTA

Date of decision: 12/08/2004

COMMON ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE M.S.SHAH)

When should a leader retire from the office :
when others ask - "WHY ?"
or
when others ask "WHY NOT ?".

The octogenarian leader of the dairy Co-operative movement in Mehsana District, who appears to have missed the significance of the above question, has moved this Court for challenging the order dated 20th July, 2004 by which the Learned Single Judge has restrained original respondent no.4 Shri. Motibhai R. Chaudhary (appellant in LPA No.1446 of 2004hereinafter referred to as "the appellant") from functioning as the Chairman of respondent no.3 Mehsana District Milk Producers Cooperative Federation Limited ('the Federal Society, for brevity) in view of the no-confidence motion passed against the appellant, as out of 15 members of the managing committee, 13 members have cast their vote in favour of the motion. The learned Single Judge has further clarified that the Vice Chairman or any other person holding the office as Incharge Chairman shall continue to function as Incharge Chairman till final disposal of the petition, with a further clarification that, he shall not take any policy decision and shall not incur any expenses exceeding Rs.2,500-00 unless expressly authorized by members of the managing committee at its meeting held in due course as required under the bye laws or otherwise. The learned Single Judge also granted liberty to the Federal Society and Iswarpura Milk Producers Cooperative Society Limited of village Mansa (a primary member of the Federal Societyappellant in LPA No.1447 of 2004 - hereinafter referred to as "Ishwarpura Primary Society") to move the court for modification of the above interim order in case the general body of the Society passes any resolution recalling any of the members of the managing committee or otherwise.

2. The above interlocutory order is passed in Special Civil Application No. 7302 of 2004 filed on 26-6-2004 by 13 members of the managing committee of the

Federal Society seeking certain final and interim reliefs on the basis of the following facts, as averred in the petition, and subsequent developments.

2.1 The 13 petitioners are members of the managing committee of the Federal Society registered under the provisions of the Gujarat Cooperative Societies Act, 1961 (the 'Act' for brevity). The Society was established in the year 1960 by Shri Mansibhai Patel who spearheaded the cooperative movement in Mehsana district and encouraged farmers, more particularly small and marginal farmers, to rear cattle and encouraged cooperative movement in Mehsana district for production and distribution of milk. Shri Mansibhai Patel died in the year 1970. Thereafter appellant Shri Motibhai Chaudhary came to be elected as the Chairman of the Federal Society. The appellant is the respected leader of cooperative movement and all the 13 petitioners accept that the appellant had contributed to the cause of milk producers in Mehsana District. However the appellant suffered serious brain stroke about two years back at the age of 83 years. The appellant was taken to Bombay hospital for major brain surgery. Because of the serious impediment to his physical and mental abilities the appellant is not only unable to walk without somebody's help, but he has complete impediment in his speech. He is also unable to put identical signatures in the proper manner. He has also lost his memory and is unable to move properly. But on account of insistence of his family friends not to relinquish the office of Chairman, the appellant is continuing as such.

2.2 It is further stated that the Federal Society has large scale business with turn over of Rs.877.30 crores in the year ended on 31-3-2004, collected milk to the tune of 44 crore liters in that year, it has 1063 primary societies as its members who in turn have 4,78,965 individual members and the federal Society also has 1700 persons on its pay roll as direct employees. In view of the aforesaid magnitude of the business of the Federal Society the petitioners requested the appellant to relinquish the office of Chairman because of his aforesaid disabilities and to hand over the office to some other member of the managing committee. Since that request was not acceded to, the petitioners addressed letter dated 29-1-2004 and reminder dated 2-2-2004 to the Managing Director of the Federal Society (Annexure-A & B to the petition) circulating no confidence motion against the appellant and also sent the same to the District Registrar of Cooperative Societies, Mehsana. On 19-2-2004 by letter at Annexure-C the District Registrar enquired from the Managing Director of the Federal

Society about the action taken on the requisition submitted by the petitioners. On 2-2-2004 the Managing Director informed one of the petitioners that he had sought legal opinion from a learned senior advocate who opined that the notice of no confidence motion is not maintainable and, therefore, nothing can be done in this regard (Annexure-D). Thereafter on 12-3-2004 the appellant proceeded on leave and handed over charge of the office of the Chairman to Shri. Vithalbhai Patel, Vice Chairman of the Federal Society who is petitioner no.10 in the petition. Shri. Vithalbhai Patel continued to discharge his duties as Incharge Chairman from 12-3-2004 to 19-6-2004.

2.3 The appellant however remained present at the Annual General Meeting of the Federal Society on 20-6-2004 and resumed duty as the Chairman. On the same day 11 out of 13 petitioners submitted a requisition (Annexure-G) for convening meeting of the managing committee to discuss the question of Chairman resuming duty inspite of his ill health and the 13 petitioners also purported to pass a resolution by circulation withdrawing the powers of the Chairman and Managing Director to make appointments, transfers, or to grant promotion of staff and specifically resolved that the Chairman shall not make appointment of any person without prior permission of the managing committee and that the Managing Director shall not consult any person appointed by the Chairman without the permission of the Managing Committee. Thereafter, on 21-6-2004 the appellant passed an office order (Annexure-I) appointing Shri Muljibhai Chaudhary as Assistant to the Chairman at a token honorarium of Rs.1-00. In the said order it was also stated that the Managing Director and the subordinate officers shall, in coordination with said Shri Muljibhai Chaudhary, submit necessary information to the Chairman. The said office order came to be challenged in Arbitration Suit No. 653 of 2003 before the Board of Nominees at Mehsana. On 23-6-2004 Board of Nominees granted ad-interim injunction against any such appointment of any person by the Chairman without the resolution of the Managing Committee. On 22-6-2004, 14 out of 15 members of the Managing Committee addressed a letter (Annexure-K) to the Managing Director moving a motion of no confidence against the appellant as Chairman of the Federal Society on the ground that the Chairman's ill-health and physical & mental incapacity to handle business and his inability to shoulder responsibilities as Chairman of the Federal Society has resulted into various difficulties in the administration of the Federal Society.

2.4. The petition giving rise to this appeal came to be filed on 25-6-2004 praying for various reliefs, mainly for directing the Federal Society (through the Managing Director) to call and convene special meeting of the Managing Committee for the purpose of considering the no confidence motion submitted by the petitioners (Annexure-K), and to direct the Registrar of Cooperative Societies, Mehsana to institute proceedings under section 76-B and also to issue appropriate direction under section 160 of the Act to remove the appellant from the office of Chairman considering the state of health of the appellant.

3.0 Subsequent developments after filing of the petition are as under:-

3.1 When the petition came up for hearing on 29-6-2004, the learned Single Judge passed the following order :-

> "Notice returnable on 14-7-2004. In the meantime, by way of ad-interim order, it is observed that it would be open to the petitioners to move the District Registrar for holding of the meeting for considering motion of no-confidence in presence of an officer who may be nominated by the District Registrar for holding of such meeting. However, it is further directed that in case such a motion is passed, the same shall not be implemented till further orders. Direct service is permitted. "

3.2 Pursuant to the aforesaid ad-interim order dated 29-6-2004 the District Registrar passed an order dated 5-7-2004 convening meeting of the managing committee on 12-7-2004 for considering the no confidence motion against the Chairman. Special Civil Application No. 8112 of 2004 filed by the Federal Society for challenging the District Registrar's abovesaid notice dated 5-7-2004 came to be disposed of with permission granted to raise appropriate defence in the pending petition for the purpose of challenging the said notice of the District Registrar.

3.3 At the meeting of the managing committee held on 12-7-2004 the no confidence motion was passed against the appellant herein by a majority 13 votes and none against the motion.

3.4 On 16-7-2004 the learned Single Judge passed an

order recording that hearing of the petition had commenced and that learned counsel for respondent no.4 (appellant herein) had made a statement on 14-7-2004 that his client shall not attend the office and shall not take any policy decision. The learned Single Judge ordered the same arrangement to continue till 20th July, 2004 when the order under appeal came to be passed.

3.5 To complete the record, the ad-interim order dated 29-6-2004 of the learned Single Judge (quoted in para 3.1 above) came to be challenged in Letters Patent Appeal No. 1403 of 2004. The appeal was disposed of on 16-7-2004 recording the intervening developments and directing that if the learned Single Judge passes any order adverse to the appellant herein, the same shall not be implemented for a fortnight. That direction has been quashed by the Hon'ble Supreme Court by order dated 2-8-2004 in SLP (C) No. 4665 of 2004 filed by the original petitioners (13 members of the managing committee).

4. After hearing the learned counsel for the parties at length, including the learned counsel for Iswarpura Primary Society, on 20-7-2004 the learned Single Judge admitted the petition, joined the said Iswarpura Primary Society as a party respondent in the main petition and passed the order granting interim relief which is under challenge in these appeals. The said order dated 20.7.2004 is operating since 2.8.2004.

5. At the hearing of the appeals, learned senior counsel Mr. K.S. Nanavati for the appellant (original respondent no.4) has raised the following contentions:-

5.1 The interim order passed by Learned Single Judge amounts to allowing the petition before the matter is finally decided on merits. The original petitioners do not have such a strong case nor do extraordinary circumstances exist which would justify such an interim order;

5.2 The order dated 5-7-2004 of the District Registrar calling / convening meeting of the Managing Committee for considering the no confidence motion is illegal and without any authority of law;

5.3 The dispute between the petitioners and the appellant touches the business of the Federal Society and, therefore, the remedy available to the petitioners is under section 96 of the Gujarat Cooperative Societies Act and not a writ petition;

5.4 The Managing Committee has no power to remove the elected Chairman on the ground of loss of confidence, as under the Gujarat Cooperative Societies Act and the Rules framed thereunder or bye laws of the Federal Society, no such power is conferred on the managing committee to remove the elected Chairman by passing such no confidence motion. Various authorities have been cited in support of the aforesaid proposition.

5.5 Even if there is any such power, the same procedure is required to be followed which is prescribed for electing the Chairman as prescribed under Section 145-Z of the Act but no such procedure is followed in the instant case. Hence, the resolution is illegal.

6. Mr. Mihir Joshi, learned counsel for the Iswarpura Primary Society (one of the 1067 primary cooperative societies which are members of the Federal Society) has submitted that a large number of members have requisitioned an extraordinary general meeting of the general body of the Federal Society to express their confidence in Shri Motibhai Chaudhary as Chairman and to remove the 13 petitioners as members of the managing committee. Hence till such meeting is held, Shri Motibhai Chaudhary can not be restrained from acting as the Chairman of the Federal Society.

7. Contention No.1:

As far as the first contention is concerned, it was also urged before the Learned Single Judge, and Learned Single Judge has relied on the decision of the Apex Court in Deoraj Vs. State of Maharashtra, AIR 2004 SC 1975 = 2004 (4) SCC 697, holding that availability of a very strong prima facie case of a standard much higher than just prima facie case, the consideration of balance of convenience and irreparable injury forcefully tilting the balance of case totally in favour of the applicant may persuade the court for granting interim relief though it amounts to granting the final relief. The court would grant such an interim relief only if satisfied that withholding of it would prick the conscience of the court and do violence to the sense of justice resulting into injustice being perpetuated through the hearing.

The learned Single Judge held that in order to uphold the democratic principles, respondent no.4 in the petition who has lost majority should not be allowed to continue to hold the office of Chairman.

8. Since this issue touches both the question of strong prima facie case and also the question of balance of convenience, we, now deal with the submissions made by the learned counsel for the parties on the other contentions and shall then revert back to this contention.

9. Contention No.2:

It was contended by Mr. Nanavati, learned senior counsel for the appellant that the District Registrar of Cooperative Societies has no power under the provisions of the Act and the Rules to convene any meeting of the Managing Committee of the Federal Society. Our attention is invited to the provisions of Section 76-B, Section 82(2) and sub sections (1) and (2) of Section 160 of the Act which read as under.

76B. Removal of officer. - (1) If, in the opinion of the Registrar, any officer makes persistent default or is negligent in performance of the duties imposed on him by this Act or the rules or the bye-laws or does anything which is prejudicial to the interests of the Society or where he stands disqualified by or under this Act, the Registrar may, after giving the officer an opportunity of being heard, by order remove such officer and direct the Society to elect or appoint a person or a qualified member in the vacancy caused by such removal and the officer so elected or appointed shall hold office so long only as the officer in whose place he is elected or appointed would have held if the vacancy had not occurred.

(2) The Registrar may, by order, direct that the officer so removed shall be disqualified to hold or to contest election for any office in the society from which he is removed and in any other society for a period not exceeding four years from the date of the order and such officer may stand disqualified accordingly."

Section 82 confers upon the Registrar of Co-operative Societies power to enforce performance of the obligations of the Society including the obligations under sub-section (1) to keep the prescribed books of accounts and to furnish the requisite statement and returns and records to the Registrar. Sub-section (2) of Section 82 further reads as under:-

"(2) Where any society is required to take any action under this Act, the rules or the bye-laws, or in compliance with an order made under sub-section (1) and such action is not taken -

(a) within the time provided in this Act, the rules or the bye-laws, or the order, as the case may be, or

(b) where no time is so provided, within such time, having regard to the nature and extent of the action to the taken, as the Registrar may specify by notice in writing,

the Registrar may himself, or through a person authorized by him, take such action, at the expense of the society; and such expense shall be recoverable from the society as if it were an arrear of land revenue."

Section 160 of the Act reads as under :-

160. Registrar's power to give direction. - (1) If the Registrar of his own motion or otherwise is satisfied that in public interest or for the purposes of securing the proper implementation of co-operative production and other development programmes approved or undertaken by the State Government or for linking and coordinating of co-operative activities such as marketing and credit or securing the proper management of the business of the society generally or preventing the affairs of the society being conducted in a manner detrimental to the interests of the members, or of the depositors or the creditors thereof, it is necessary to issue directions to any class of societies generally or to any society or societies in particular, he may issue directions to them, from time to time, and all societies or the society concerned, as the case may be, shall be bound to comply with such directions.

(2) The Registrar may of his own motion

or otherwise modify or cancel any directions issued under sub-section (1), and in modifying or cancelling such directions he may impose such conditions as he may deem fit.

[emphasis supplied]

10. In the instant case the District Registrar has not passed any order removing the Chairman under section 76-B of the Act. However, sub section (1) of section 160 does empower the District Registrar to issue directions to a society for the purpose of proper management of the business of the society and to prevent the affairs of the society conducted in a manner detrimental to the interest of the members. The society concerned is bound to comply with such directions. The Registrar is also empowered to issue such directions if he is satisfied that in public interest it is necessary to do so.

11. As pointed out by the original petitioners, respondent no.3 Federal Society is the largest milk producers society in Asia and had turnover of Rs.877 crores last year. It collected 44 crores liters of milk from 1063 primary societies with total membership of almost 4,80,000 members and 1700 employees. When the petitioners who are 13 out of 15 members of the managing committee requisitioned the Managing Director to convene meeting of the managing committee for considering no confidence motion against the Chairman on the ground of physical and mental incapacity of the Chairman to discharge the onerous duties of the office of Chairman of such a large Federal Society, the said requisition was not accepted by the Managing Director on the ground that such a motion of no confidence was not maintainable. The learned Single Judge, therefore, rightly permitted the petitioners to make a representation to the District Registrar to exercise his powers. We do not think that upon receiving such representation the District Registrar committed any illegality in convening meeting of the Managing Committee for considering the aforesaid motion of no confidence, when 13 elected members out of total 15 members of the Managing Committee of such a large Federal Society expressed their view that the management of the Federal Society cannot be properly carried on by the Chairman on account of his physical and mental incapacity to properly conduct the business of the society. The District Registrar was justified in exercising his power of issuing directions under sub section (1) of section 160 of the Act requiring the meeting of the Managing Committee to be convened for considering the motion of no confidence.

12. At this stage we may note the submissions made on behalf of the respondents herein, i.e. the original petitioners that the affairs of the Federal Society are being looked after by Managing Director under the supervision of the Chairman and that Chairman is not a mere titular head of the Federal Society.

Bye law No. 44 of the Federal Society's Bye Laws reads as under:-

" Chairman shall exercise general control over all the affairs of the Federal Society. In case the Chairman is on leave or out of station or cannot remain present for a long period, the Vice Chairman shall act as the Chairman and shall perform the day to day functions, otherwise he (the Vice Chairman) will be a member of the Managing Committee".

[emphasis supplied]

It is the case of the original petitioners that since the Chairman himself is unable to function on account of his old age and ill health, a person purportedly appointed as assistant to the Chairman was given access to all the files and the business of the Federal Society was sought to be run by certain persons who are not members of the Managing Committee but who were acting through the assistant to the Chairman as their proxy and the affairs of the society were not permitted to be run by the elected Managing Committee of the Federal Society but by such extra-legal functionaries.

13. The contention urged on behalf of the appellants is that the Registrar could have at the most under sub-section (2) of Section 82 of the Act required the Managing Director of the Federal Society to convene a meeting and if the Managing Director had failed to convene the meeting then only the Registrar could have given a direction under sub-section (2) of Section 82, assuming that any such power was available with the Managing committee to pass a motion of no confidence against the Chairman.

In our view, when the Managing Director of the Federal Society had already informed the petitioners by letter dated 2.2.2004 that such a notice of no confidence motion is not maintainable, it was not necessary for the District Registrar to undertake the formality of

addressing a letter to the Managing Director to convene a meeting and then to wait for its non-compliance before exercising the powers under sub-section (2) of Section 82 when under sub-section (1) of Section 160 already the situation warranted in public interest that a meeting of the managing committee of the Federal Society be convened immediately.

So also, the contention that the District Registrar misconstrued the ad-interim order dated 29.6.2004 of this Court as a mandate and that the District Registrar's order dated 5.7.2004 does not indicate his own volition is mere hairsplitting on the part of the appellants to underplay the gravity of the situation where such a large Federal Society having an impact on the daily life of lakhs of milk producers in the entire district and many other lakhs of consumers in the State was heading for a deadlock or a stalemate.

14. In the above set of circumstances, if the District Registrar convened meeting of the Managing Committee for consideration of the motion of no confidence against appellant Shri Motibhai Chaudhary, it cannot be said that the order was issued by the District Registrar dehors the provisions of sub section (1) of section 160 of the Act.

15. The contention that such direction can be issued only to the society and not to the Managing Committee cannot be accepted because when under Section 74 of the Act and as per bye law No.35(6) of the bye-laws of the Federal Society, the management of the business of the society is to be carried on by its managing committee and when the apprehension about detriment to the affairs of the society arises on account of the Chairman of the society elected by the managing committee not being in a position to function properly, and the attempt made by as many as 13 out of 15 elected members of the managing committee to remove the Chairman by passing a vote of no confidence since 29.1.2004 is being frustrated by not convening a meeting of the managing committee, the case is certainly covered by the provisions of sub section (1) of section 160 of the Act which justify the Registrar's action of convening meeting of the managing committee for the above purpose.

16. Contention No.3:

The contention is that the dispute between petitioners and respondent no.4 is a dispute touching the business of the society and, therefore, the petitioners

have an alternative remedy available under section 96 of the Gujarat Cooperative Societies Act and writ jurisdiction cannot be invoked for settlement of private disputes.

In the first place, the forum under section 96 of the Cooperative Societies Act would not have any jurisdiction over the District Registrar of Cooperative Societies who is required to exercise his powers under sub section (1) of section 160 of the Act. Secondly, as per the settled legal position, the rule that ordinarily this Court will not entertain a petition where an equally efficacious alternative remedy is available is a rule of caution and it does not bar jurisdiction of this Court under Article 226 of the Constitution. Looking to the magnitude of the business of the Federal Society which concerns almost 4,80,000 milk producers and which collects and sells 44 crore liters of milk every year, exercise of the discretion to entertain the petition under Article 226 of the Constitution does not suffer from any jurisdictional error. For these reasons it is not possible to accept the contention that the learned Single Judge ought not to have passed the interlocutory order because the petitioners had an alternative remedy available to them.

17. Contention No. 4:

On merits the learned counsel for the two appellants have vehemently submitted that the Managing Committee has no power to remove the elected Chairman on the ground of loss of confidence, because the Gujarat Cooperative Societies Act and the Rules thereunder or the bye-laws do not provide for any such contingency nor do they confer any such power on the members of the Managing Committee. The learned counsel have also placed reliance on the following decisions in support of their contention that an elected office bearer of a cooperative society can not be removed by passing a motion of no confidence, unless there is a specific statutory provision or bye law governing the elected body:-

1) AIR 2002 KERALA, 325. S Lakshmanan vs. V. Velliankeri

2) AIR 1991 P & H, 149. Jagdev Singh vs. Registrar, Co.Op. Societies, Haryana

3) AIR 1982 Bombay, 216 Hindurao vs. Krishnarao

4) ILR 1975 A.P., 242 Veermachaneni Venkata Narayana vs. The Deputy Registrar of Co-op. Societies, Eluru, West Godavari District & Ors.

It is contended that the decision of the Full Bench of this Court relied upon by the learned Single Judge dealt with a case under the Agricultural Produce Markets Committee Act, and not under the Cooperative Societies Act.

18. Chapter VII of the Act bears the title, "Management of Societies". Section 73 provides tht subject to the provisions of the Act and the rules, the final authority of every Society shall vest in the general body of members in general meeting, summoned in such a manner as may be specified in the bye-laws. Section 74 provides for the managing committee in the following terms:-

74. Committee, its powers and functions.- The management of every society shall vest in a committee, constituted in accordance with this Act, the rules and bye-laws, which shall exercise such powers and perform such duties as may be conferred or imposed on it respectively by this Act, the rules and the bye-laws :

Section 74C provides that election of members of the committees and of the officers of the Committee of authorized societies shall be subject to the provisions of Chapter XI-A and shall be conducted in the manner laid down by or under that Chapter.

Section 76A provides for appointment or removal of Managing Director or Chief Executive Officer to be made or done with the previous approval of the Registrar in case of the class of Societies to be specified by notification in the Official Gazette.

Chapter XI-A provides for elections of committees and officers of specified societies i.e. societies specified in Section 74C including dairy cooperative societies. Sections 145-B to 145-Z lay down the procedure for elections to the managing committee and other committees of such specified societies.

19. Reference may also be made to the bye laws of respondent no.3 Federal Society. Bye-law No.25 provides

that the final authority of the Federal Society shall vest in the general body.

Bye-law No.27(3) which provides for election of the managing committee by the general body in accordance with the election rules, also provides through clause (12) that any elected member of the managing committee may be removed by a 3/4th majority of the members of the general body remaining present at any general meeting. Clause (13) of the said bye-law also provides for removal of the Managing Director for which the general body may deliberate and take decision but such decision can be implemented only after receiving approval from the NDDB so long as any loan and interest is outstanding from the Federal Society to the NDDB. Bye-law No.10 provides for removal of a member of the general body by a 3/4th majority on account of certain defaults such as non-payment of his dues or conviction for a moral turpitude or on account of insolvency etc..

Bye-law No.35(1) provides for constitution of the managing committee of respondent No.3- Federal Society which is to consist of 21 members out of which 16 members shall be elected by the general body of the Federal Society. Bye-law No.35(3) provides that the term of the managing committee shall be three years or till the next elections. If any member of the managing committee expires or there is vacancy for any other reasons, the vacancy shall be filled in by co-option of any person who is eligible to be elected as a member of the managing committee and his term shall be till the expiry of the term of the managing committee to which he is co-opted. Clause (5) of the said bye-law reads as under:-

"The managing committee constituted as above shall elect its Chairman and Vice-Chairman."

Clause (6) of the said bye-law provides that the managing committee shall have all the authority to manage the business of the Federal Society in accordance with the bye-laws and subject to the guidance of the general body through its resolutions. It is the managing committee which appoints the Managing Director and it determines the remuneration and terms and conditions of the Managing Director.

Clause (18) of bye-law No.41, also authorises the managing committee to make recommendation for removal of a member of the Federal Society as the member under bye-law (10) where a member could be removed by the general body by 3/4th majority and with the approval of

the Registrar on the grounds of arrears, insolvency etc..

20. It is strenuously submitted on behalf of the appellants that bye law no. 35 providing that the managing committee shall elect its own Chairman and Vice Chairman cannot be construed as impliedly enabling any motion of no confidence being passed by the managing committee against the Chairman or Vice Chairman. It is, therefore, urged that it is only the general body of the Federal Society which can take a decision regarding removal of the Chairman, but the managing committee has no power or authority to pass any such resolution of no-confidence or to remove the Chairman under any circumstances. It is also submitted that the requisition has already been made for convening the extraordinary meeting of the general body of the society to express vote of confidence in appellant Shri Motibhai Chaudhari and, therefore, till such meeting takes place, there should not be any interim order to restrain Shri Motibhai Chaudhari from acting as Chairman.

21. A perusal of the relevant provisions of the Gujarat Cooperative Societies Act, the Gujarat Cooperative Societies Rules and the bye-laws of the Society makes it clear that there is no prohibition on the managing committee of a Federal Society or any cooperative society removing its Chairman by passing a vote of no-confidence. While the bye-laws provide for a three year term for the managing committee (bye-law No.35(3)) no term is provided for the Chairman and Vice-Chairm of the managing committee. Since the Chairman / Vice-Chairman is elected by members of the managing committee by a majority and since no term is provided for the Chairman/Vice Chairman, as per the provisions of Section 16 of the Bombay General Clauses Act, the managing committee also has the power to remove him by passing a vote of no-confidence by a simple majority. There is nothing in the provisions of the Gujarat Cooperative Societies Act, 1961, Gujarat Cooperative Societies Rules, 1965 or bye-laws of respondent No.3-Federal Society which negates the power of the managing committee available to it under Section 16 of the Bombay General Clauses Act. Although byelaws provide for removal of a member of the Society by a three-fourth majority of the general body present at the meeting on the ground of default in payment, insolvency etc. and also for removal of a member of the managing committee by a two-third majority of the general body present at the meeting the bye-laws do not contain any provision which would even remotely take away the general power of the managing committee under Section 16 of the

Bombay General Clauses Act that the power to appoint includes the power to remove.

21.A Moreover, a Full Bench of this Court speaking through the then Chief Justice Hon'ble Mr Justice DM Dharmadhikari (as His Lordhsip then was) has already held in NANDLAL BAVANJIBHAI POSIYA & ORS Vs. DIRECTOR OF AGRICULTURE MARKETING & RURAL FINANCE & ANR, 2002 (2) GLR, 1132 as a general principle that a democratic institution transacts its business on majority opinion of its members. This is an unwritten rule, tradition and work culture of every elected body. It is only when there is a departure from this tradition or unwritten rule that the Rules of Business, bye-laws or statutes governing the democratic institutions may provide for particular majority of 2/3 rd or less for taking decisions. Enjoyment of confidence by the leader of the democratic body is essential in decision making process and it is more necessary for implementation of the decisions of the majority. If a particular decision is taken by majority, but due to lack of confidence enjoyed by the leader, the decision is not carried out, a conflict, and some times, a stalemate will be created in the working of the elected body. The loss of confidence in the leader of an elected body would many times hamper smooth working of the elected body, and some times, may make it impossible for him to carry on the functions of the committee due to internal feuds and conflicts. The work culture of a democratic body inhers in it the right of its members to move a no-confidence motion against their elected leader, which is a concomitant of the right to elect the leader. No-confidence motion can be passed by simple majority against the holder of the elected office, who is elected by simple majority, unless the Rules of Business or bye-laws or statute indicate a contrary intention or prohibit passing of a no-confidence motion. The Full Bench of this Court made the aforesaid observations which apply to elected bodies generally and not merely to the Agricultural Produce Market Committees.

The decision of a Division Bench of Bombay High Court and the decisions of Full Benches of Punjab & Haryana, Andhra Pradesh and Kerala High Courts relied upon by learned counsel for the appellants were also duly considered by the Full Bench of this Court. The view taken by the aforesaid High Courts that provisions of clause-16 of the General Clauses Act would not apply to the elected offices has not been accepted by the Full Bench of this Court. While concluding, the Full Bench observed as under:-

" In construing provisions of law regulating the constitution and working of an elected body, such interpretation should be preferred which ensures its smooth functioning, and any other interpretation which might create hindrance or stalemate in its functioning needs to be avoided".

The Full Bench of this Court agreed with the Division Bench of the Delhi High Court which held in Bar Council of Delhi vs. Bar Council of India, AIR 1975 Delhi 200, that the body which has the authority to elect its Chairman has the inherent and implied power to remove the Chairman. If the Chairman holds his office at pleasure, then he can be removed at will but if the Chairman holds his office otherwise than at pleasure, he can be removed only for cause after notice and hearing. The Delhi High Court had relied on the statement of law made in 19 Corpus Juris Secundum, pages 71-72 and in 19 American Jurisprudence 29, pages 545 and 547.

22. Mr Jani for the contesting respondents has also relied on the decisions of the English Courts in Booth v. Arnold, (1895) 1 QB 571 and Foster v. Foster, (1916) 1 Chancery Division 532. However, since the Full Bench of this Court has already considered this question at length, we do not propose to discuss these judgments.

23. Mr Nanavati has, however, placed strong reliance on the decision in Mohan Lal Tripathi vs. Dist. Magistrate, Rae Bareilly, AIR 1993 SC 2042 in support of his submission that concepts familiar to common law and equity must remain stranger to Election law unless statutorily recognised and that right to remove an elected representative, too, must stem out of the statute, its existence or validity can be decided on the provision of the Act, rules or bye-laws and not as a matter of policy.

Apart from the fact that the observations relied upon by the appellant herein were also considered by the Full Bench of this Court in the case of N.B. Posiya (supra), this Court would like to deal with the above authority at some length.

24. Before considering the applicability of the aforesaid decision to the facts of the present case, it is necessary to note the caveat sounded by the Apex Court in Union of India vs. Chajju Ram, (2003) 5 SCC 568, that - "it is now well settled that a decision is an authority

for what it decides and not what can logically be deduced therefrom. It is equally well settled that a little difference in facts or additional facts may lead to a different conclusion."

In Haryana Financial Corporation vs. Jagdamba Oil Mills, (2002) 3 SCC 496 (para 19) also, the Apex Court has made the following pertinent observations :-

"Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are not to be read as Euclid's theorems nor as provisions of the statute. The observations must be read in the context in which they appear. Judgments of Courts are not to be construed as statutes."

25. In Mohan Lal Tripathi's case (supra), as per the Scheme of the U.P. Municipalities Act, the President of the Municipality was directly elected by the voters of the town because the population of the town was less than one lakh. However, under the Act, the power to remove the President by passing a motion of no confidence was vested in the Municipal Board. The said provision contained in sub-section (2) of Section 87A of the Act was sought to be read down, and in the alternative, was challenged by the appellant who was directly elected as President by the voters in the town but was removed from the office of President by a vote of no confidence passed by the Municipal Board. The said challenge was based mainly on the following grounds: -

(i) the provision was applicable only where the President of the Municipality is elected by the members of the Municipal Board for a town having population of more than one lakh. The provision was not applicable where the President of the Municipality was directly elected by the voters in the town with population of less than one lakh.

(ii) where the President is directly elected by the people of the town, his removal by the Municipal Board which is a smaller and a different body than the one that elected him, was violative of the democratic concept of removal or recall of an elected representative by the same body only.

(iii) Such a provision was even otherwise arbitrary and irrational and, therefore, violative of Article 14 of the Constitution.

26. On interpretation of the relevant provisions of the Act, the Apex Court rejected the first contention and held that such power of removal by passing a vote of no confidence was available against Presidents of all Municipalities, whether directly elected or elected by the Municipal Board.

The second contention which has been strenuously urged by the learned counsel for the present appellant is really not available to him in the facts of the present case, because the Chairman in the present case was elected by elected members of the Managing Committee themselves and the same body has removed him by passing a vote of no confidence.

In Mohan Lal Tripathi's case, the Apex Court held that when the statute provides for removal of President of a Municipality by passing a vote of no confidence by the members of the Municipal Board even against a President directly elected by the people of the town, such a statutory provision prevails notwithstanding any concept or political philosophy that the body which has elected its representative should itself have the power to remove or recall the elected representative. However, what is interesting is that the Court negatived the challenge based on Article 14 that it is arbitrary or irrational to permit a smaller and different body than the one that elected the President of the Municipality to remove the President. The Apex Court gave the following reasoning:-

".. A person removed from office of President for loss of confidence, from the very nature of the Constitution of Board, is recall by the electorate themselves. An elected representative is accountable to its electorate. That is the inherent philosophy in the policy of recall. For the President his electorate, to exercise this right, is the Board as it comprises of representatives of the same constituency from which the President is elected. Purpose of S.87-A of the Act is, to remove elected representative who has lost confidence of the body which elected him. It may be by people themselves or they may entrust their power through legislation to their representative. In Act it is the latter. Members of the Board are

> elected from smaller constituencies. They represent the entire electorate as they are representatives of the people although smaller in body. A President who is elected by the entire electorate when removed by such members of the Board who have also been elected by the people is in fact removal by the electorate itself. Such provision neither violates the spirit nor purpose of recall of an elected representative. Rather ensures removal by a responsible body. It cannot be criticised either as irrational or arbitrary or violative of any democratic norm. ..... The Board is thus visualised as a body entrusted with responsibility, to keep a watch on the President whether elected by it or the electorate. Any arbitrary functioning by the President or disregard of provision of the Statute or acting contrary to the interest of electorate could be known to the Board only. Therefore, it was not only proper, but necessary to empower the Board to take action, if necessary."

The aforesaid observations, therefore, support the case of the respondents herein (original petitioners) rather than the appellant. It is not possible to visualize the accountability of the President to the body electing him without that body having the power to remove him by passing a vote of no confidence, unless the relevant statute prescribes a different procedure or forum.

27. As far as the contention of the appellant that the appellant ought not to have been restrained from acting as a Chairman of the Federal Society on the basis of physical / mental incapacity when the medical certificates are in favour of the appellant, it is required to be noted that as many as 13 out of the 15 elected members of the Managing Committee have passed a no confidence motion against the appellant (original respondent No.4). As per the settled legal position, in the case of motion of no confidence, there is no imperative requirement that it should be passed on some particular ground. There is a difference between motion of no confidence and a censure motion. While it is necessary in the case of a censure motion to set out a ground or charge on which it is based, a motion of no confidence need not set out a ground or charge. No such consideration of impropriety or lapse arises when a motion of no confidence is moved. Although a ground may be mentioned when passing a motion of no-confidence, the

existence of a ground is not a prerequisite for a motion of no-confidence. The essential connotation of a no-confidence motion is that the party against whom such motion is passed has ceased to enjoy the confidence of the requisite majority of members. (vide - Babulal Muljibhai Patel vs. Nandlal Khodidas Barot & Ors., AIR 1974 SC 2105 and N.B. Posiya vs. Director of Agricultural Marketing & Rural Finance, 2002 (2) GLR 1132). Hence, it is not necessary to consider the certificates relied upon by the appellant and that too when the appellant is admittedly unable to speak.

28. Contention No.5:-

The last contention is that even if there is any such power, the same procedure is required to be followed which is prescribed for electing the Chairman under Section 145-Z of the Act, but no such procedure having been followed in the instant case, the resolution dated 12.7.2004 is illegal. To be precise, the contention is that the meeting of the managing committee at which the motion of no-confidence was passed against Shri Motibhai Chaudhary (appellant herein) was not presided over by the Collector or an officer nominated by him as required by Section 145-Z and, therefore, the resolution is illegal.

29. The provisions of Section 145-Z are not to be looked at in isolation. The section is a part of Chapter XIA. Chapter XIA (Sections 145-A to 145-Z) applies to elections to committees of specified societies (that is societies belonging to the categories specified in Section 74C) including the managing committee. Since such elections are highly contested, the legislature has provided a detailed procedure and mechanism for the entire election process right from the stage of issuance of notification by the Collector declaring the election program till the last stage of election of the officers of the specified categories including election of the Chairman by the managing committee and also challenge to the elections before the Election Tribunal under Section 145-U of the Act. The provisions of Section 145-Z as set out hereinbelow are required to be read in the backdrop of the aforesaid statutory scheme.

"145-Z. Special provision for election of officers of specified societies. -

(1) This section shall apply only to election of officers by members of committees of societies belonging to the categories specified in section 74C.

(2) After the election of the members of the committee or whenever such election is due, the election of the officer or officers of any such society shall be held as provided in its bye-laws, but any meeting of the committee for this purpose shall be presided over by the Collector or an officer nominated by him in this behalf."

The Collector of the district is incharge of the entire election program right from the first stage till the last stage and, therefore, the provision that the meeting for electing the officers of the Society shall be presided over by the Collector or his nominee is in order to ensure that on account of any disruption at the meeting there is no dispute about the genuineness or authenticity of the elections of the office bearers like the Chairman or the Vice-Chairman. It is, therefore, not possible to accept the contention that the meeting of the managing committee for passing a motion of no-confidence against the Chairman must also be presided over by the Collector or his nominee. In the facts of the instant case, there is no dispute about the genuineness or authenticity of the proceedings at the meeting of the managing committee held on 12.7.2004 at which the resolution expressing no confidence against the Chairman was passed. No such dispute is raised either at the hearing before the learned Single Judge or at the hearing of this appeal before us. There is, therefore, no substance in the last contention also.

30. Back to Contention No.1:

Coming back to contention no.1, in light of the aforesaid findings, it is not possible to accept the submissions made by the learned counsel for the appellants that the petitioners have not made out a strong prima facie case for obtaining the interim relief granted by the learned Single Judge, We are unable to find any substance in the submissions of learned counsel for the appellants that this was not an extraordinary case calling for interim relief to restrain respondent no.4 from acting as the Chairman of the Federal Society society. Considering the facts already noticed earlier that respondent no.3 Federal Society has turn over of Rs.877 crores a year and employs 1700 persons, has 1063 cooperative societies as its primary members which in turn have 4,79,000 milk producers as members the affairs of such a Federal Society need to be managed properly and if 13 elected members out of total 15 elected members of

the managing committee are of the view that the elected Chairman of the society is physically and mentally not capable of discharging onerous duties of the Chairman of such Federal Society, the interim order passed by learned Single Judge restraining the appellant from functioning as Chairman of the Federal Society cannot be said to be illegal or unjust.

31. At this stage Mr. Mihir Joshi, learned counsel for Iswarpura Milk Producers Cooperative Society submits that since a requisition is already moved for expressing confidence in Shri Motibhai Chaudhary, he should be permitted to function as the Chairman of the Federal Society or some direction should be given regarding convening extraordinary general meeting of the general body of the Federal Society. We are, however, informed that Special Civil Application No. 9150 of 2004 is already pending before the learned Single Judge wherein the Learned Single Judge has passed order dated 6-8-2004 directing the District Registrar to verify genuineness of the requisition and the matter is posted before the learned Single Judge on 30-8-2004 for considering the question as to which item should be allowed to be discussed as the agenda of the meeting. The learned Single Judge will, therefore, consider this aspect in Special Civil Application No. 9150 of 2004. More over, the learned Single Judge has also granted liberty to the Federal Society and the aforesaid primary member society to move the Court for modification of the order under appeal, in case the general body of the Federal Society passes any resolution recalling any of the members of the managing committee or otherwise. Hence, we are not required to consider Mr Joshi's submissions in these appeals.

32. Accordingly, while we dismiss the appeals as without substance, we also record the statement coming from Mr PK Jani, learned counsel for the contesting respondents (original petitioners) that the Managing Committee would like to put up a suitable memorial in recognition of the significant services rendered by the octogenarian leader to the cause of the dairy co-operative movement in Mehsana District after the dust raised by all the disputes and litigations settles down.

33. As the appeals are dismissed, Civil Application Nos.5783 and 5784 of 2004 do not survive and are accordingly dismissed.

Dt: 12-8-2004 (M.S. SHAH, J)

(D.A. MEHTA,J)

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